

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **DISTRICT OF NEVADA**

3 JAMES H. HAYES,

Case No.: 2:21-cv-02267-APG-DJA

4                   Petitioner

**Order**

5 v.

6 WILLIAM HUTCHING, et al.,

7                   Respondents.

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9           Petitioner James H. Hayes moves for appointment of counsel. ECF No. 12. The  
10 respondents do not oppose. ECF No. 13. In order to ensure due process, I grant the motion to  
11 appoint counsel.

12           There is no constitutional right to appointed counsel for a federal habeas corpus  
13 proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425,  
14 428 (9<sup>th</sup> Cir.1993). The decision to appoint counsel is generally discretionary. *Chaney v. Lewis*,  
15 801 F.2d 1191, 1196 (9<sup>th</sup> Cir.1986), cert. denied, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730  
16 F.2d 1228, 1234 (9<sup>th</sup> Cir.), cert. denied, 469 U.S. 838 (1984). However, counsel must be  
17 appointed if the complexities of the case are such that denial of counsel would amount to a denial  
18 of due process, and where the petitioner is a person of such limited education as to be incapable  
19 of fairly presenting his claims. *See Chaney*, 801 F.2d at 1196; *see also Hawkins v. Bennett*, 423  
20 F.2d 948 (8<sup>th</sup> Cir.1970). Here, the legal issues that Hayes seeks to raise are potentially complex.  
21 Notably, the respondents filed a non-opposition to the appointment of counsel. I conclude that  
22 counsel is warranted so I grant it.  
23

1 I THEREFORE ORDER that the petitioner's motion for appointment of counsel (ECF  
2 No. 12) is **GRANTED**.

3 I FURTHER ORDER that the Federal Public Defender for the District of Nevada (FPD)  
4 is appointed to represent the petitioner.

5 I FURTHER ORDER the Clerk of Court to **ELECTRONICALLY SERVE** the FPD a  
6 copy of this order, together with a copy of the petition for writ of habeas corpus (ECF Nos. 7, 8,  
7 9). The FPD has 30 days from the entry of this order to file a notice of appearance or to indicate  
8 to the court its inability to represent the petitioner in these proceedings.

9 I FURTHER ORDER that after counsel has appeared for the petitioner in this case, the  
10 court will issue a scheduling order, which will, among other things, set a deadline for the filing  
11 of an amended petition.

12 Dated: April 1, 2022



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14 U.S. District Judge Andrew P. Gordon  
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